FOR ARGUMENT

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1608

STATE OF MICHIGAN,
Petitioner,

v.

LOREN TYLER and ROBERT TOMPKINS,
Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MICHIGAN

RESPONDENTS' BRIEF

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STATEMENT OF FACTS

Respondents wish to make the following additions to the Statement of Facts.

Page 4, paragraph 2. Fire Chief See seized the two plastic containers only after summoning Detective Webb of the Police Department. (A. at 11 — 12.)

Page 4, paragraph 4. The purpose of Assistant Fire Chief Somerville's visit was solely and exclusively for investigation and gathering of evidence of the arson fire. (A. at 23.)

Page 4, paragraph 4. When Assistant Fire Chief Somerville entered the premises, it was obvious to Assistant Fire Chief Somerville that the public was not invited. (A. at 22.)

Page 5, paragraph 0. The record does not indicate that the business records on the floor were damaged.

Page 5, paragraph 0. The business records were seized without a warrant and sent to the Michigan State Police Crime Lab in Warren. (A. at 50.)

Page 5, paragraph 3. By January 29 the police or fire department had placed a lock on the front door of the building. But since the plywood on the door on the right hand side of the steps had been knocked out, one could enter the building without a key. (A. at 69.)

Page 6, paragraph 1. Tyler had some records on the premises. He was never allowed to see them after the fire. (A. at 70.)

SUMMARY OF ARGUMENT

Respondents had a reasonable expectation of privacy before the fire occurred. Unless something happened that destroyed Respondent' expectation of privacy or the

reasonableness of that expectation, the searches and seizures by the police intruded on constitutionally protected interests in privacy. The fact that a fire occurs does not destroy expectation of privacy unless nothing remains that someone would want to protect as private. The fact that a fire was deliberately set does not destroy privacy. Regardless whether a victim of a fire set tte fire, he may still want to preserve as private certain property. If so, the constitutionally protected interest in privacy remains after the fire. Nor can a statute authorizing warrantless post fire searches destroy the reasonableness of an expectation of privacy. The statutes authorize general, nonspecific searches which are incompatible with the Fourth Amendment. Nor can this court permit Petitioner to justify the intrusion by information that Petitioner became aware of after the search was made. To do so would let the end of conviction justify the means and would permit remediless intrusions on the privacy of innocent persons.

Moreover, the privacy analysis should not be used to permit the seizure of private property just because no one's expectation of privacy will be invaded. A person's property rights should be entitled to some Fourth Amendment protection.

Before conducting a search of fire-damaged premises, the fire or police officials should be required to obtain a warrant. A warrant would limit abuses of discretion on whether to search and the scope of the search.

ARGUMENT

I. UNLESS CONSENT HAS BEEN OBTAINED, THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION REQUIRES A WARRANT TO BE OBTAINED TO CONDUCT A SEARCH OF FIRE-DAMAGED PREMISES, WHETHER ADMINISTRATIVE OR TO FURTHER A CRIMINAL INVESTIGATION, UNLESS THE SEARCH FALLS WITHIN ONE OF THE RECOGNIZED EXCEPTIONS.

A. Searches And Seizures On Fire-Damaged Premises Are Searches And Seizures Within The Meaning Of The Fourth Amendment.

The crucial question in this appeal is whether the searches and seizures conducted by the police in this case are searches and seizures within the meaning of the Fourth Amendment. The Prosecutor maintains that they are not. Respondents maintain they are.

The protection of the Fourth Amendment does not depend on what area is being intruded on.

Under *Katz* v *United States*, 389 U.S. 347 (1967), whether Respondents were protected by the Fourth Amendment in the present case depends on whether the searches and seizures conducted by the Assistant Fire Chief and the police officials violated the privacy on which Respondents justifiably relied. If so, this Court will then have to consider whether the searches should have been made only after a warrant was obtained.

Before a fire occurs, a businessman has a justifiable expectation of privacy in parts of the premises that are

not open to the public. *See* v *Seattle*, 387 U.S. 541 (1967). That is, a businessman can reasonably expect to "not be disturbed except by personal or business invitees, and that records [will] not be taken except with his permission . . ." *Mancusi* v *DeForte*, 392 U.S. 364, 369 (1968).

Nor does the occurrence of a fire make a businessman's reliance on privacy less justifiable. After a fire he has the same legal rights and powers to limit access to his building (and thus preserve his privacy) that he had before the fire.

> "The property continues to be protected by the law from looters . . . ." *People* v *Tyler*, 399 Mich. 564, 582, 250 NW2d 467, 476 (1977).

Petitioner may argue that a businessman no longer has a reasonable expectation of privacy after a fire because of the knowing exposures made to members of the public as a result of the fire. This argument should be rejected.

Admittedly, a fire causes a businessman to consent to certain exposures to members of the public that would not occur otherwise. Firemen must be admitted to fight the fire. Representatives of the businessman's insurance company must be admitted to inspect the damage. Workmen must be admitted to do the repairs.

But consent to these necessary instrusions does not mean that the businessman is throwing open the premises to the public.

> "A fire is not an invitation to any or all to enter to satisfy their curiosity or for any tther purpose. It does not open the property to public scrutiny." *People* v *Tyler*, 399 Mich. 564, 582, 250 NW2d 467, 476 (1977).

Consequently, the businessman has not surrendered any expectation of privacy by consenting to necessary intrusions by individuals because only:

> "what a person knowingly exposes *to the public*, even in his home or office, is not a subject of Fourth Amendment protection." *Katz* v *United States*, 389 U.S. 347, 351 (1967) (Emphasis by Respondents).

Petitioner may claim that expectations of privacy terminate when a fire is deliberately set. This argument should be rejected.

If a victim of an arson fire helped set the fire, he still expects some privacy. While setting the fire voluntarily exposes the area to some persons — the firemen, the insurance company investigators, and the repairmen — the arsonist does not open the area to the public. He still expects to limit access to the premises.

So long as the arsonist is entitled to possession of the property, the law will help the arsonist protect his property against unwanted intrusions by private individuals. That a Plaintiff is an arsonist is no defense to either a civil or criminal trespass action.

No reason exists why the law should not provide the same assistance when the unwanted and unauthorized intrusion is by a government official.

On the other hand, if the victim of an arson fire was not connected with setting it, that victim clearly has a reasonable expectation of privacy. The exposures that an innocent victim must suffer because of a fire result from someone else's criminal act. While such involuntary exposures diminish one's privacy, a person may still

"[seek] to preserve as private," *Katz* v *United States*, 389 U.S. 347, 351 (1967), what has been exposed; if so, what remains of his privacy should still be constitutionally protected. To hold otherwise would mean that a rape victim has no constitutionally protected interest in privacy but her rapist does. Surely that cannot be the law.

Since the innocent victim's claim to constitutionally protected privacy is stronger than the arson, an understandable desire may exist to hold that the arsonist's expectation of privacy is terminated but not the innocent victim's.

Under such a holding the privacy of innocent victims almost certainly would be violated. Once the police know that a fire was deliberately set, police suspicion falls indiscriminately on all owners and occupants. Thus, the privacy of innocent owners and occupants could easily be violated. Even if police suspicion focuses instantly on the arsonist and no one else, searching the arsonist's property can intrude on an innocent victim's privacy.

If an innocent victim's privacy is violated, he has no practical remedy for the violation. Consequently, nothing would discourage the police from inadvertently or intentionally intruding on the privacy of other innocent victims in the future.

Thus, to protect the privacy of innocent victims of an arson fire, this court must hold that no one's interest in privacy is terminated by the fact that the fire was deliberately set.

Petitioner makes a second argument to support the claim that no reasonable expectation of privacy remains after a fire. Petitioner argues that since many states have

passed statutes authorizing warrantless post fire searches, no constitutionally protected interest in privacy is violated by such searches for two reasons. First, Petitioner asserts that the existence of the statutes shows that such searches are reasonable and therefore not within the prohibition of the Fourth Amendment. Second, "only if the expectation [of privacy] be one that society is prepared to recognize as 'reasonable,' " *Katz* v *United States*, 389 U.S. 347, 361 (1967) (concurring opinion of J. Harlan), will it receive consitutional protection. Since the statutes in question authorize warrantless post fire searches, society does not recognize as reasonable the expectation that police and fire officials may be excluded to protect privacy; therefore that expectation is not constitutionally protected.

Both of these arguments should be rejected.

That one or more legislatures determines that a search is reasonable or that an expectation of privacy is unreasonable does not require courts to reach the same conclusion. Thus, the lower court cases that consider the constitutionality of searches made to prevent hijackings do not hold that since Congress prescribed searches, the searches are reasonable. Instead the courts determine from the facts presented to them whether reasonable expectations of privacy have been violated and whether the searches were reasonable. See Annot., 14 A.L.R Fed. 286 (1973).

This Court and our history give general criteria for determining whether a search is reasonable. Under those criteria, the searches permited by these statutes are unreasonable.

Mich. Comp. Laws Ann. §29.6 is typical of these statutes. It says:

> "The director or any officer is authorized to investigate and inquire into the cause or origin of a fire occurring in this state resulting in loss of life or damage to property, and for that purpose may enter, without restraint or liability for trespass, any building or premises and inspect the same and the contents and occupancies thereof."

Since the statute authorizes warrantless searches, the reasonableness of the searches is immediately suspect. The general rule is that:

> "searches conducted outside of the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment — subject only to a few specifically established and well delineated exceptions." *Katz* v *United States*, 389 U.S. 347, 359 (1967).

Since the statute authorizes searches that violate this general rule, the reasonableness of the searches is suspect.

Since the statute gives the officer in the field discretion whether to search, the reasonableness of the search is even more suspect. Giving such discretion to the searching officer runs counter to:

> "The historical judgment, which the Fourth Amendment accepts, . . . that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech." *United States* v *United States District Court*, 407 U.S. 297, 317 (1972).

Petitioner suggests that these principles are irrelevant to the present case because once a magistrate determines that a fire occurred, a warrant will automatically issue. Implicitly Petitioner suggests that the discretion to search cannot be abused. This is not so. The discretion to search can be abused if the search is too long after the fire, if the number of entries to conduct searches is so high that it disrupts reconstruction or the lives of the inhabitants, or if the time of day that the search is conducted is especially disruptive of the lives of the inhabitants. Since the discretion to search can be abused, a magistrate should be interposed between the citizen and the searching officer.

While warrantless searches are not necessarily unreasonable, the statute permits general, nonspecific searches which are, by definition, unreasonable. The statute does not carefully limit the scope of a search to constitutionally innocuous areas such as "gas, fuel oil, or electrical systems, or of burned areas of the home or business." Petitioner's Brief at 17 - 18. Instead, it leaves to the searching officer the decision whether to examine "goods, clothing, and furnishings remaining on the premises," Petitioner's Brief at 16, n. 9; whether to seize and examine personal papers or business records; and whether to place a chain on the door and seize the entire premises (as was done in this case). Nor does a statute require the searching officer to be looking for a specific piece of evidence. Instead, the searching officer can look at anything he wants to see if any of it might be evidence. This country's founding fathers judged such nonspecific, general searches to be offensive and patently unreasonable when conducted with a warrant. The lack of a warrant does not change that judgment.

Thus, the searches permitted by these statutes are not reasonable and would remain unreasonable even if all 50 states passed such statutes.

Nor can the passage of these statutes strip a citizen of the expectation that he will not be subjected to a general, nonspecific search. Such a law is as incompatible with a free society as a law saying a citizen has no expectation of privacy in his own home, and until the Constitution is changed, such statutes must be struck down.

Therefore, the existence of statutes permitting warrantless post fire searches does not cause Respondents' constitutionally protected interest in privacy to disappear or alter the conclusion that the searches authorized by these statutes are unreasonable.

Petitioner advances yet another argument against holding that a constitutionally protected interest in privacy exists after a fire. Petitioner says that most persons would consent to a search of fire damaged premises and then impliedly concludes that such searches therefore do not violate any constitutionally protected interest in privacy. This argument is not well founded. *Camara* v *Municipal Court*, 387 U.S. 523 (1967), required a warrant to be obtained before an administrative search could be conducted even though "most citizens allow inspection of their property without a warrant." 387 U.S. at 539. Thus *Camara* rejects Petitioner's argument.

Lastly, Petitioner suggests that no constitutionally protected interest in privacy was intruded on because the record establishes that Respondents are guilty of arson, and arsonists have abandoned the premises within the meaning of the Fourth Amendment.

This argument is a direct attack on our traditions of liberty and justice. In essence, the Petitoner is saying that because there has been a conviction by a jury of arson that therefore the evidence used to obtain that conviction is legal and proper because there is a conviction of arson. In short, the end justifies the means.

This type of argument is pernicious. In effect, Petitioner is asking this Court to rule that neither the arsonist nor his victim have any interest in privacy. And that the police should have uncontrolled discretion to conduct any type of intrusion in privacy simply because the fire appears to have been deliberately set.

Any type of nonspecific search is probably impermissible when conducted with a warrant, much less without a warrant.

Traditionally, the courts of this land have required court approval prior to making a search that constitutes an intrusion on privacy.

Petitioner wants the police to conduct a search with total disregard to whether persons have surrendered their interest in privacy merely because there appears to be an incendiary fire.

There is a further fallacy in Petitioner's reasoning. The Petitioner makes no distinction between whether the victim of the search is the arsonist himself or his innocent victim. In the subject case the fire officials and the police officials found gasoline which obviously indicated an apparent manmade fire. Certainly, this is just and reasonable cause to go to a magistrate and obtain a search warrant. No reasonable excuse or explanation has been made in this record as to why the fire or police officials did not bother to go to a magistrate and obtain a

search warrant. Now Petitioner asks this Court to eliminate the requirement of a search warrant merely because there was an apparent incendiary fire and a subsequent jury conviction.

To allow the police or fire officials such power requires the total abrogation of all concepts of privacy or privacy protection.

This Court must not allow or permit privacy to be subject to the whim of the police officer. At the very least, government officials must be required to act with respect for the rights of a person based on the facts in the possession of the official at the time of the act. To hold otherwise, to hold that an official may act with disregard for what he perceives to be the rights of an individual in the hope of an eventual justification would be an unprecedented departure from the principles this country was founded upon.

Additionally, even if some type of temporary abandonment occurred within the meaning of the Fourth Amendment, Respondents reestablished their interest in privacy after the fire. Immediately after the fire, the Assistant Fire Chief knew that the premises were not open to the public. Subsequent events confirmed that the public was not invited in. The building was boarded up. Additionally,

> "The record does not support a conclusion that Tyler had abandoned the fire damaged premises." *People* v *Tyler*, 399 Mich. 564, 583, 250 NW2d 467, 476 (1977).

Such evidence shows that Respondents sought to protect as private the building and therefore reestablished a constitutionally protected interest in privacy.

For the reasons set forth before, Respondents submit that they have a constitutionally protected privacy after the fire.

However, the privacy analysis conceals the radical change that Petitioner is asking this court to make.

As *Katz* noted, the Fourth Amendment protects more than privacy.

> "That Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all." 389 U.S. at 350.

One of the rights the Fourth Amendment protects is the right to not have private property searched or seized without a warrant.

> "Nevertheless, one governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable unless it has been authorized by a valid search warrant.'" *Camara* v *Municipal Court*, 387 U.S. 523, 528 - 529 (1967).

In fact, the protection of private property is one of the fundamental tenets of this country's history.

> "The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete

> form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employees, of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by its conviction of some public offense; it is the invasion of the sacred right which underlies and constitutes the essence of Lord Camden's judgment. *Boyd* v *United States*, 116 U.S. 616, 626 - 627, 630 (1874).

Petitioner wants to alter this principle so that searches of private property need not be authorized by a warrant if the police suspect that the owners or occupants are arsonists.

While modern courts are more sensitive to violations of privacy than earlier courts, this Court should not abandon the well-established rule that absent exigent circumstances, a person's right to control his property cannot be interfered with unless the interference is authorized by a court.

Thus, this court should hold that the Fourth Amendment protects persons after a fire for two reasons. First, there is a strong potential that constitutionally protected expectations of privacy will be invaded. Second, to permit this type of general search of private property without a warrant is completely foreign to our history and repugnant to the principles this country was founded on.

B. A Warrant Should be Required Before a Post Fire Search is Conducted.

The general rule is that a warrant should be obtained before a search is conducted. *Katz* v *United States*, 389 U.S. 347, 357 (1967).

United States v *Martinez-Fuerte*, 428 U.S. 543 (1976), rejected that a warrant should be required before checkpoint locations at the border of the United States were constitutional. In reaching that conclusion, this court reviewed the reasons that warrants have been required.

> " '[W]hen [an] inspector [without a warrant] demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization.' 387 U.S. at 532.
>
> A warrant provided assurance to the occupant on these scores. We believe that the visible manifestations of the field officer's authority at a checkpoint provides substantially the same assurances in this case.
>
> Other purposes served by the requirement of a warrant also are inapplicable here. One such purpose is to prevent hindsight from coloring the evaluation of the reasonableness of the search or seizure. . . . The reasonableness of checkpoint stops, however, turns on factors such as location and method of operation of the checkpoint,

> factors that are not susceptible to the distortion of hindsight, and therefore will be open to post stop review notwithstanding the absence of a warrant. Another purpose of a warrant requirement is to substitute the judgment of the magistrate for that of the searching or seizing officer. . . . But the need for this is reduced when the decision to 'seize' is not entirely in the hands of the officer in the field, and deference is to be given to the administrative decisions of higher ranking officials." 428 U.S. at 564 - 566.

Each of these reasons for requiring a warrant exists in the present case.

Strong Fourth Amendment interests can be present. A place of business is protected almost as much as the home. Depending on what remains after the fire, the invasion can be almost as intrusive as an invasion before the fire. Thus, tradition requires a warrant to be obtained before the fire.

The reasons advanced in *Camara* for requiring a warrant exist here. An occupant of a building has no way of knowing whether the code requires the search to be made, or what the searching official can look at. For example, Respondents did not know whether the police or fire officials had the right to make repeated visits. Nor did Respondents know whether the police could seize papers from the building. Nor did Respondents know whether the police could put a chain and lock on Respondents' building. In other cases where less damage occurs, persons would not know whether officials have the right to examine closets, goods, and clothing; nor would they know whether officials have the right to search undamaged areas of the building.

Hindsight can color the reasonableness of a search, especially if the search extends beyond the burned-out areas. In such a case, the investigator has usually determined that arson has occurred and turns to the question whether the occupant is the arsonist. Both conclusions may rest on suspicions rather than articulable facts.

Lastly, a warrant should be required to place the neutral judgment of a magistrate between the citizen and the searching officer. Under Petitioner's rule, the decision to search and the scope of the search are completely in control of the officer in the field. The courts have traditionally refused to give a searching official that much discretion and have required that a warrant be obtained.

Imposing the requirement that a warrant be obtained will not adversely affect the public interest.

> "As the facts of this case illustrate, requiring a warrant would not burden unduly officials whose duty it is to extinguish fires and investigate their causes. Evidence acquired while firefighters are lawfully on the premises putting out the fire is admissible under the plain view doctrine. The owner of the property will often consent to a search. In other cases, as here, there will be probable cause to justify the issuance of a search warrant as part of a criminal investigation. If there is insufficient evidence to justify issuance of a warrant as part of a criminal investigation but there is a sufficient basis for an investigation within 'reasonable legislative or administrative standards' to determine the cause of the fire, a warrant might issue on that basis.

> If there are exigent circumstances, such as reason to believe that the destruction of evidence is imminent or that a further entry of the premises is necessary to prevent the recurrence of the fire, no warrant is required and evidence discovered is admissible." *People* v *Tyler*, 399 Mich. 564, 578, 250 NW2d 467, 474 (1977).

Since the general rule is that a warrant must be obtained before an unconsented search can be made, since the reasons for requiring a warrant exist when officials make a post fire search, and since requiring a warrant would not adversely affect the public interest, this court should hold that the police are required to obtain a warrant before any search is conducted of fire-damaged premises.

C. Even if the Warrant is not Required for an Administrative Search, A Warrant Should Be Required for a Criminal Search.

Even if a warrant is not required for an administrative search of fire-damaged premises, a warrant should be required for a criminal search.

A criminal search is more intrusive physically than an administrative search for the cause of the fire. The search for the cause of the fire terminates when the fire chief determines that the fire was arson. At that point the arson investigator sets out to collect evidence to identify the arsonist. To do so, the arson investigator may look at the goods, clothing, and furnishings remaining on the premises. Petitioner's Brief at 16, n. 9. He might seize and examine the records and personal papers found on

the premises. Or he might seal off the premises from everyone, including the owner, in order to preserve evidence. These investigations far exceed the physical intrusion by someone who just wants to determine the cause of a fire.

A criminal search is more hostile than an administrative search. An administrative search violates only the right to privacy while a criminal search also violates Fifth Amendment rights of self protection. *Frank* v *Maryland*, 359 U.S. 360 (1959).

Since a search of fire-damaged premises that is part of a criminal search is more intrusive and more hostile, a warrant should be required for a criminal search even if one is not required for an administrative search.

In the present case, all of the searches after the initial seizure during the fire were part of a criminal investigation. The police were called to the scene of the fire before the first seizure was made. Except for the search by the Assistant Fire Chief the next morning for the extent of the damage, the police were involved in all searches subsequent to the initial search and conducted many of the searches without the assistance of the fire department officials. Additionally, the Assistant Fire Chief admitted that the only purpose of the searches was to collect evidence of arson.

Consequently, a warrant should have been obtained before this search which was part of a criminal investigation was made.

II. IF THIS COURT DETERMINES THAT THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION WAS NOT VIOLATED BY THE SEARCHES, THIS COURT SHOULD REMAND THIS CASE TO THE MICHIGAN SUPREME COURT FOR DETERMINATION OF WHETHER THE SEARCHES VIOLATED THE PARALLEL PROVISION IN THE MICHIGAN STATE CONSTITUTION.

Even if the searches in the present case did not violate the Fourth Amendment of the United States Constitution, the searches may have violated the parallel provision in the Michigan Constitution. Mich. Const. Art. I, §11. Thus, if this Court determines that the Fourth Amendment of the United States Constitution was not violated, a remand to the Michigan Supreme Court would be in order.

A remand would be particularly appropriate in the present case. The circumstances under which State officials may conduct searches of a state's citizens is an important state question. While the United States Constitution puts a floor beneath which the states may not go, states are free to more liberally interpret parallel provisions. In this case, a more liberal construction could result from either a broader view of what privacy a citizen may reasonably expect or from a more encompassing view of when warrants should be required.

Past experience in Michigan indicates that the possibility of differing interpretations is more than theoretical. *People* v *Turner*, 390 Mich. 7, 210 NW2d 336 (1973).

Consequently, even if this Court determines that the Fourth Amendment of the United States Constitution was not violated, the case should be remanded to the Michigan Supreme Court.

III. THIS COURT DOES NOT HAVE JURISDICTION TO ORDER A HEARING ON TOMPKINS' STANDING.

Admittedly, the Michigan Supreme Court had discretion to hear and decide whether to order a standing hearing for Respondent Tompkins. While a discretionary refusal by a state court to hear substantive arguments on a Federal right may lead to this court having jurisdiction of the Federal question, this court has jurisdiction of the substantive question only if "the state court action in the particular circumstances is, in effect, an avoidance of the Federal right." *Williams* v *Georgia*, 349 U.S. 375, 383 (1955). No such showing has been made in this case. Consequently, this Court does not have jurisdiction of the substantive question.

RELIEF REQUESTED

Respondents pray that this Court will either:

(a) affirm the judgment of the Supreme Court of the State of Michigan on the Fourth Amendment issues presented, or

(b) reverse the judgment of the Supreme Court of the State of Michigan on the Fourth Amendment issues presented and remand the case to the Michigan Supreme Court for a determination of the issues under the parallel provisions of the Michigan State Constitution.

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